Supreme Court, U.S.
FILED
951343 FEB 14 1996
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

Robert F. and Joanne M. Smith

vs.

RSL layout & Design

Petition For WRIT OF CERTIORARI TO

THE STATE OF NEW HAMPSHIRE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Robert F, Smith, pro se
Joanne M. Smith, pro se
88 Main St
Exeter, N.H.
(603) 772-2256

58 pp

QUESTIONS PRESENTED

1. Did the New Hampshire State Legislature mandate that the profession of land surveying be regulated under RSA 310-A:53?

2. Did the New Hampshire State Legislature designate the New Hampshire Board of Licensure for Land Surveyors to be that regulatory authority?

3. Did the New Hampshire Legislature grant the New Hampshire Board of Licensure for Land Surveyors rulemaking authority under N.H. RSA 310-A:58?

4. Did the New Hampshire State Legislature provide the New Hampshire Board of Licensure for Land Surveyors the authority to develop and implement the N.H. Code of Administrative Rules under N.H. RSA 541?

5. Does N.H. State Legislature through RSA 310-A:58 mandate, positively and without exceptions, what the licensed land surveyors legal duties are as outlined in the the 1986 N.H. Code of Administrative Rules?

6. To be in compliance with the legislative intent of N.H. RSA 310-A:58, is the word "shall" as used in the 1986 N.H. Code of Administrative Rules "mandatory" or "discretionary"?

7. Did the trial court based on the "state of the law," statutory, administrative and controlling case law grant the Respondent an exception to the rule of law?

8. Was the trial court's granting of this exception to the rule of law, based on the evidence (Petitioners' Exhibits A & B) arbitrary, and unreasonable?

9. Was the trial court's granting of this exception to the rule of law, based on the evidence (Petitioners' Exhibits A & B) an egregious abuse of power?

10. Does the due process clause of U.S.C. Amends Amend 14 (1) contain a substantive component that bars egregious, arbitrary and unreasonable actions by governments (courts)?

11. Did the trial court by it action deny Petitioners equal protection under law?

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OPINIONS BELOW

The opinion of the New Hampshire Supreme Court in reviewing the merits of Petitioners' case appears at Appendix A to this Petition and is unpublished. The opinion of the trial court, 92-C-382, appears at Appendix C to this Petition and is unpublished.

JURISDICTION

The date on which the New Hampshire Supreme Court decided this case (92-C-283) was November 16, 1995. A copy of that decision appears at Appendix A. A timely filed petition/motion for reconsideration was thereafter denied on December 28, 1995 and a copy appears at Appendix B.

The jurisdiction of this Court is involked under 28 U.S.C. Sec. 1257(a)

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Appendix A: Order (denying Petitioners' appeal) of November 16, 1995, Case # 95-291, New Hampshire Supreme Court.

Appendix B: Order (denying Petitioners' Motion for Reconsideration) of December 28, 1995, Case # 95-291, New Hampshire Supreme Court

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Appendix G: Excerpt Smith v. Wedgewood Builders Corp. 134 N.H. 125, 129-30.

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Appendix J: Excerpt 1986 N.H. Code of Administrative Rules, Lan 501.01 and 502.01

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Appendix L: Excerpt from Appeal Astro Spectacular, 138 N.H. at 300.

Appendix M: U.S.C.Amends Amend 14 [1]

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Const. Amends., Amend XIV, section 1, is set forth in Appendix M.

New Hampshire RSA 310-A:53(1) is set forth in Appendix D, of this Petition.

New Hampshire RSA 310-A:58 is set forth in Appendix E, of this Petition.

New Hampshire RSA 541

New Hampshire RSA 21:(1)(2) (1994 Supp.)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES INVOLVED

1986 N.H. Code of Administrative Rules.

1993 N.H. Code of Administrative Rules.

EXHIBITS/DOCUMENTS

Petitioners' Exhibit A, N.H. RSA 310-A:58, Appendix E to this Petition.

Petitioners' Exhibit B, excerpt 1986 N.H. (BLLS) Code of Administrative Rules, Appendix F to this petition.

No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1995

Robert F. Smith

&

Joanne M. Smith, Petitioners

vs.

R.S.L. LAYOUT & DESIGN, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE STATE OF NEW HAMPSHIRE SUPREME COURT

Petitioners, Robert F. and Joanne M. Smith, respectfully pray that a writ of certiorari be issued to review the judgement and opinion of the New Hampshire Supreme Court's refusing to take an appeal from the lower court.

STATEMENT OF THE CASE

Respondent RSL LAYOUT & DESIGN, is owned by Richard S. Ladd, LLS. Ladd as a professional land surveyor is licensed by the New Hampshire Board of Licensure for Land Surveyors (BLLS), a regulatory authority, under N.H. RSA 310-A:53 (1) (Appendix D).

The BLLS also is mandated under N.H. RSA-A:58, Rulemaking Authority (Appendix E), to develop and promulgate what is known as the New Hampshire Code of Administrative Rules consistent with N.H. RSA 541.

RSA 310-A:58 VI (Appendix E), refers to the ethical and professional standards to be met by each licensed land surveyor and disciplinary actions to be taken in violation of those standards.

One of the offenses for disciplinary action is detailed under RSA 310-A:58 VI(b) (Appendix E), which refers to the standards of adequate deed research into history of subject tract,adjacent tracts, etc.

Petitioners' Exhibit B (Appendix F) Lan. 502.03, Lan. 502.04 and Lan. 502.05 reflects the legislative mandate of the word "shall" as worded in N.H. RSA 310-A:58 and 58 VI(b) (Appendix E).

Petitioners employed Respondent, RSL LAYOUT & DESIGN, to survey a tract of land located in Nottingham, County of Rockingham, State of New Hampshire. A portion of the land was known as the John J. McCrillis land.

Respondent was to survey, which it did do, the McCrillis land and prepare a subdivision plan conformable to the subdivision requirements for the town of Nottingham, N.H.

At the completion of the subdivision, others claimed the McCrillis Land.

Petitioners filed a PETITION TO QUIET TITLE, SMITHS v. WEDGEWOOD BUILDERS CORP., et al, Rockingham County Superior Court, Exeter, N.H., which was docketed as 88-E-203.

The trial court awarded the McCrillis Land to the other party.

Petitioners filed a NOTICE OF APPEAL to the New Hampshire Supreme Court. The appeal was taken and oral arguments heard.

On April 23, 1991 the New Hampshire Supreme Court affirmed, Smith v. Wedgewood Builders Corp., et al, 134 N.H., 125, the trial court's order on the McCrillis Land.

As part of that decision the N.H. Supreme Court stated that the Petitioners' experts had failed to complete an adequate title (deed) and

boundary research, Smith v. Wedgewood Builders Corp. at page 139-140 (Appendix G).

Respondent, Petitioners surveyor of record, testifying at 88-E-203 informed the court he had not performed any deed and boundary research as mandated by N.H. RSA 310-A:58, (Appendix E) and the 1986 New Hampshire (BLLS) Code of Administrative Rules (Appendix F).

Petitioners paid Respondent $24,779.50, for its surveying, a large part for the subdivision of the McCrillis Land, which was awarded to others, SMITH v. WEDGEWOOD BUILDERS CORP at 130 (Appendix G-1).

Petitioners had paid Respondent in good faith when billed, as Respondent continually counseled Petitioners that there was no question to the Petitioners

ownership of the McCrillis Land.

Petitioners refused to pay Respondent any additional monies for Respondents negligence.

Respondent failed to provide that duty of ordinary care, to counsel and advise Petitioners as a matter of law that it had not followed the law. Comparable to other professional malpractice or negligence, e.g., legal malpractice, MORRILL v. TILNEY, 128 N.H. 773, 777, 519 A.2d 293, 295 (1986), MARKS POLARIZED CORP. v. SALINGER & GORDON, 476 N.Y.S. 2d 743, 744 (Sup. Ct. 1984)

Respondent refused to provide and still refuses to provide Petitioners with a recordable survey/plan for the remainder of Petitioners' land.

Respondent filed a complaint against Petititioners in Rockingham County

Superior Court, Exeter, N.H., Docket #92-C-382.

Respondent complaint alleged that the Petitioners still owed RSL LAYOUT & Design $13,944.35 for surveying, related costs and interest incurred while in the employment of the Petitioners. Respondent also requested an attachment of Petitioners' home and real estate. Petitioners filed a timely objection on Respondent's claims alleging negligence and Respondent's failure to provide that duty of ordinary care, failure to advise and counsel Petitioners as a matter of law NORTH BAY COUNCIL, INC. v. Bruckner, that he had failed (breach of contract) to provide that professional duty required under New Hampshire Law, SEAWARD CONSTRUCTION Co., v. CITY OF ROCHESTER 118 N.H., 128 (1978),

GRISWALD v. HEAT CORP, 108 N.H., 119, 124, 229 A.2d, 183, 187 (1967), LEARY v. CITY OF MANCHESTER, 90 N.H., 256-7, 6 A.2d 760-1 (1939).

On March 17, 1992 a hearing was held on Respondent's Complaint.

On the same date the court granted the attachment on Petitioners' home and real estate awaiting trial which was held on February 23, 1995.

Petitioners prior to trial filed with the trial court a Motion for Summary Judgement which included in the body of the motion references to the same legislative mandates concerning the regulation of the profession of land surveying RSA 310-A:53(1) (Appendix D),

RSA 310-A:58 (Appendix E) and the 986 N.H. Code of Aministrative Rules (Appendix F).

The trial court denied Petitioners' motion on November 21, 1995 (Appendix H).

Petitioners at trial placed into evidence Exhibits A & B, RSA 310-A:58 (Appendix E), and an excerpt from the 1986 N.H. (BLLS) Code of Administrative Rules (Appendix F).

Respondent, at trial, alleged it had no legal duty to perform a comprehensive deed and boundary research as mandated by RSA 310-A:58 and most importantly 58 VI(b), standard for deed and boundary research (Appendix E).

Respondent by its own admission failed to follow the legislative mandate of N.H. RSA 310-A:58 VI(b) which was promulgated through the 1986 N.H. (BLLS)

Code of Administrative Rules, which was acknowledged in the trial court's ORDER OF JUDGEMENT (Appendix C-2).

Respondent at trial acknowledged on the record, not transcribed at this time, that it was not Respondent's duty to counsel the Petitioners concerning Respondent's legal duties as a licensed land surveyor which by itself is, as matter of law, actionable misconduct, malpractice/negligence, NORTH BAY COUNCIL v. BRUCKNER, 131 N.H. at 548.

On Febrauary 24, 1995 the trial court's Order of Judgement granted Respondent's request for $ 13,944.35 with attachment of Petitioners' property remaining in force.

The trial court (Appendix C-2) agreed with Respondent that it could not find a New Hampshire Statute which required the Respondent, as the surveyor of record,

to perform, as a matter of law, a comprehensive deed and boundary search despite Petitioners' Exhibit A (Appendix E) by stating:

"...[I]n any event, from my review of all the evidence presented, I do not find nor do I rule that a surveyor is bound by any statutory law or custom and practice to personally perform any deed research...."

Petitioners filed a timely Motion to Set Aside and Related Relief to the trial court which was denied on February 24, 1995 (Appendix I).

The trial court by this unreasonable and arbitrary statement invalidated the legislative intent of Petitioners' trial Exhibits A & B; N.H. RSA 310-A:58 VI(B) (Appendix E), and the 1986 N.H. Code of Administrative Rules (Appendix F).

This statement was in conflict with

the legislative intent granting the BLLS regulatory authority under RSA 310-A:53 (1) (Appendix D), and rulemaking authority under N.H. RSA 310-A:58, Exhibit A (Appendix E).

Petitioners' trial exhibit Exhibit B (Appendix F) clearly indicates the BLLS did follow out the legislative intent of N.H. RSA 310-A:58 (Appendix E), conformable to N.H. RSA 541 and the promulgation of its 1986 N.H. Code of Administrative Rules to all land surveyors licensed by the State Of New Hampshire.

Lan. 502.01 (Appendix J), of the 1986 N.H.(BLLS) Code of Administrative Rules states that the licensed land surveyor "shall" research the subject tract to insure the correctness of the record evidence.

The BLLS in its 1993 Code of Administrative Rules, Lan. 502.01, (Appendix K) clarifies the professional duties of the licensed land surveyor assuming the responsibility of performing a land survey for a client.

Each section of the 1986 BLLS regulatory rules, Petitioners' trial Exhibit B (Appendix F) consistently indicate the BLLS'S intent or mandate by using the word "shall" governing the professional duties and responsibilites of the licensed land surveyor, including deed and boundary research.

Petitioners offered to the trial court prevailing opinions of the New Hampshire Supreme Court, concerning the legislative intent/mandate of the word "shall" as written into both statute and

administrative law: Appeal Astro Spectacular, 138 N.H. 298, (1994); N.H. HEALTH SERv. v. COMM'N OF INS., 122 N.H 268; APPEAL OF JOHN DENMAN, 120 N.H. 568,572 (1980); SILVA v. BOTCH & a. 120 N.H. 600, 601 (1980), 420 A.2d 301; KILROY v. TROAST, 117 N.H. 598 (1977).

N.H. RSA 21 (1)(2), (1994 Suppl.), cites Appeal Astro Spectacular, 138 N.H. 298, (1994), as controlling law for the standard of judicial interpretation of the legislative intent as written into statute. Excerpt, page 300, (Appendix L).

This Court also in its opinion Escoe v. Zerbst, Warden, 295 U.S. 400 at 494 clearly sets a standard of review for the courts concerning statutory construction and legislative intent of the word "shall." That opinion clearly

directs that "shall" is mandatory.

This Court by this opinion stated: "...[S]tatutes are nor directory when to put them in that category would result in serious impairment of the public or the private interests that they were intended to protect...."

Respondent failed to place into evidence any controlling legal authority granting the Respondent the right to ignore the legislative intent of RSA 310-A:58 VI(b), RSA 541 and the 1986 New Hampshire (BLLS) Code of Administrative Rules.

The trial court's order of February 24, 1995 was not merely an erroneous decision but based on the evidence in hand; N.H RSA 310-A:53(1) (Appendix D); Petitioners' trial Exhibits A & B, N.H.RSA 310-A:58 (Appendix D) and the 1986 N.H.

(BLLS) Code of Administrative Rules (Appendix F) the trial court's decision was arbitrary and unreasonable.

The due processs clause contains a substantive component ZINERMON v. BURCH, 495 U.S. 113, 125 that bars arbitrary ,unreasonable and capricious court actions regardless of the fairness of procedures used to impliment them.

The trial court's action by ignoring the law deprived Petitioners of substantive due process, 474 U.S. DANIELS v. Williams, 327, 337 and equal protection under law, U.S.C.A. Amends. Amend 14 (1) (Appendix M).

The trial court by not following the legislative intent of the word "shall" in N.H. RSA 310-A:53 (1), N.H. RSA 310-A:58, RSA 21(1)(2) (1994 Supp.) and the 1986 N.H. Code of Administrative Rules went against the grain of

prevailing opinions of both Federal and State Courts, ESCOE v. Zerbst, Warden; APPEAL ASTRO SPECTACULAR, concerning the construction of and the language used in statutory and regulatory rules.

Petitioners had taken out a second mortgage to pay Respondent for the subdivision of the McCrillis Land.

Petitioners were unable to recoup any monies, as they had planned to do by sale of homesites from the McCrillis subdivision, to pay of their second mortgage.

Petitioners elderly, retired and living on a fixed income, their savings exhausted and credit destroyed, must sell their home to satisfy the trial Court's Order of Judgement, (Appendix C).

Petitioners filed in a timely manner a

NOTICE OF APPEAL to the New Hampshire Supreme Court pursuant to New Hampshire Supreme Court rule 7(1).

Petitioners in their Notice of Appeal raised the issue of the trial court granting the Respondent an exception to the rule of law; statutory, regulatory or administrative and controlling case law (Appendix N) and by doing so deny Petitioners their U.S.C. Amends. Amend 14 (Appendix M) rights where there was a liberty (freedom from arbitrary and unreasonable court action) and property right (freedom to posses, enjoy and dispose of their property) involved.

The N.H. Supreme Court denied (Appendix A) Petitioners' appeal on November 16, 1995.

Petitioners filed a Motion for Reconsideration to the New Hampshire Supreme Court which was denied on

December 28, 1995 (Appendix B).

Petitioners now file with this Court their WRIT OF CERTIOARI TO THE STATE OF NEW HAMPSHIRE SUPREME COURT.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

(a) That the trial court in its Order of Judgement ignored the legislative intent of the word "shall" as written into N.H. RSA 310-A:53(1); N.H. RSA 310-A:58; N.H. RSA 541; N.H. RSA 21:2 Common Usage and the 1986 N.H. Code of Adminisrative Rules thereby granting the Respondent an exception to the rule of statutory law, administrative law and prevailing case law.

(b) The N.H. Supreme Court, by denying the Petitioners' Notice of Appeal failed to rule on the New Hampshire

State's Legislature intent of the word "shall" as written into N.H. RSA 310-A;53(1); N.H. RSA 310-A:58, N.H. RSA 21:(1)(2).

(c) That the failure of the N.H. Supreme Court to take Petitioners' Notice of Appeal sanctioned the trial court's departure from the accepted and usual course of judicial proceedings. The Respondent was not required to carry the burden of proff to substantiate its claims that it was not required by law to be responsble for a comprehensive deed and boundary research when providing a survey not just for Petitioners but for any client.

(d) This Petition is extremely important as the trial court's Order of Judgement is in total contradiction to opinions of this Court concerning the legislative mandate of the word "shall" as written into statute.

(e) This Petition is extremely important for determining whether or not the Petitioners were deprived of substantive due process. Most district courts and this Court have left the door open to substantive due process abuse by government but have rarely granted such claims. Petitioners feel that the taking of this Petition will allow this Court to examine the standards of review for substantive due process claims and if necessary in its opinion provide new guidelines for federal and state courts to evaluate such claims.

(e) That there is no such thing as small injustice; there is no such thing as a small abridgement of rights; that if it has happened to any of us, make no mistake, it has happened to all of us.

(f) That this departure by the trial court from the consent of fairness and impartiality and approved by the N.H. Supreme Court calls for the exercise of this Court's supervisory power.

CONCLUSION

For the above reasons a writ of certiorari should issue to review the judgement of the trial court.1/

Dated: February 14, 1996

Respectfully submitted,

Robert F. Smith pro se
Robert F. Smith

Joanne M. Smith pro se
Joanne M. Smith

1/ If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to The New Hampshire Supreme Court for redetermination in light of this Court's opinions ESCOE v. ZERBST, WARDEN and the New Hampshire Supreme Court Appeal Astro Spectacular.

THE STATE OF NEW HAMPSHIRE SUPREME COURT

In case No. 95-291, R.S.L. and Design. Inc., v. Robert F. Smith & a., the court upon November 16, 1995 made the following order:

The court having reviewed the notice of appeal and appendix, the decision below is summarily affirmed in accordance with rule 25(1)(a) on the basis that no substantial queston of law is presented by the appeal, and the court does not disagree with the result below.

Distribution:
Gordon B. Snyder, Esquire
Joanne & Robert Smith
Clerk, Rockingham County Superior Court
92-C-382
Honorable Frederick D. Goode
Theresa H. Hayes, Supreme Court Clerk

S/_____
Howard J. Zibel, Clerk

APPENDIX A

THE STATE OF NEW HAMPSHIRE SUPREME COURT

IN CASE No. 95-291, R.S.L. and DESIGN, INC. v. ROBERT F. SMITH & JOANNE M. SMITH the court upon December 28, 1995 made the following order:

Defendants' motion for reconsideration denied.

Distribution:
Gordon B. Snyder, Esquire
Joanne & Robert Smith
Clerk, Rockingham County Superior Court
92-C-382
Honorable Frederick D. Goode
Theresa H. Hayes, Supreme Court Clerk

S/_____
Howard J. Zibel, Clerk

APPENDIX B

ROCKINGHAM COUNTY SUPERIOR COURT

NOTICE OF DECISION

R.S.L. Layout and Design Inc.

vs. 92-C-382

Robert F. Smith, Et Al

ORDER OF JUDGEMENT

Plaintiff brings this action is assumpit claiming the sum of $13,944.35 for surveying and related services rendered to the defendants but for which they have not paid. Defendants contend that the surveying services in question were nor rendered conformably with certain provisions of the "New Hampshire Code of Administrative Rules" (Exhibit B), particuarily paragraph 502.23 which states:

"Whenever necessary, the land surveyor shall examine the subject tract and abutting tracts or seek additional information which may relate to the boundaries at hand..." defendants are of the firm opinion that so much so of the foregoing language "...the land surveyor shall..." requires the land surveyor himself or those actually in his employ are required by law to do the deed research relating to the survey performed, and that since the plaintiff here did not perform such research personally or have it done by someone in his employ, that the defendants are not liable for the balance due on the bill. Defendant's opine that the dictum "...displays a poor perimeter at best" appearing in the case of Smith v. Wedgewood Builders Corp., 134 N.H. 125, 129, is directly

the result of the plaintiffs failure to personally perform the deed research which resulted in the "perimeter" charaterization cited. That record, while before the Supreme Court, was expanded and the error of misnomer of the roads corrected as the opinion notes. Clearly the misnomer was not the cause of the adverse ruling rendered by the Supreme Court.

In any event, from my review of all the evidence presented, I do not find nor do I rule that a surveyor is biund by any statutory law or custom and practice to personally perform any deed research. In this case, the defendants engaged the srvices of a lawyer, a land boundary consultant by the name of Donald Wilson, and the plantiff surveyor. It was the "team" assembled in the employ of the Smiths that resulted in the work product

provided by the plaintiff. Though Mr. Ladd (of R.S.L.) did not personally perform any of the deed research, I find that he nontheless "examined", all of the information provided to him by the Smiths and by their agent Donald Wilson in full compliance with the law and reglatory standards under which the corporate plaintiff and its owner Richard Ladd were operating. It sis unlikely that there is anything this Court could say in this opinion that would ever convince the Smiths that their position in this matter is untenable and without merit.

On the state of the record presented I find no breach of duty by the plaintiff in connection with the services rendered to the defendants that would justify a denial of its claim for payment.

With respect to plaintiff's request for finding of facts and rulings of law;

1-5, 7, 8 are Granted

6 is neither Granted or Denied. I do not understand the request or the nature of the impropriety in question; and 9, 10 are DENIED on grounds that these requests seek an advisory opinion based on speculation ("That if...").

Defendants sibmitted no requests.

Judgement is entered for the plaintiff in the sum of $13,944.35.

Dated: February 24, 1995

S/_____
Frederick D. Goode, Presiding Justice

APPENDIX C-4

N.H. RSA-310:53 GENERAL PROVISIONS.

I. In order to safeguard property and to promote the public welfare, the practice of land surveying in this state is hereby declared to be subject to regulation in the public interest.

APPENDIX D

PETITIONERS' EXHIBIT A (92-C-382)

February 23, 1995

ENGINEERS, ARCHITECTS, LAND SURVEYORS

310-A:58 Rulemaking Authority. The board shall adopt rules, pursant to RSA 541-A, relative to:

I. The application procedure for license to practice under this chapter.

II. The qualifications and records of applicants in addition to those requirements set under this chapter;

III. How an applicant shall be examined, including the time and place of examination;

IV. How the license to practice under this chapter shall be renewed, including the requirements for continuing education;

V. The establishment of all fees required under this chapter;

APPENDIX E

VI. Ethical and professional standards required to be met by each holder of a license to practice under this chapter and how disciplinary actions by the board shall be implimented for violations of these standards, including:

(a). Technical Standards for forest, rural, and urban surveys, including minimum error of closure; and

(b). Standards of adequate deed research into the history of the subject parcel and adjacent tracts necesssary for proper practice:

VII. Matters related to the proper administration of this chapter; and

VIII. Procedures for conduct of hearings consistent with the requirements of due process.

PETITIONERS EXHIBIT B (92-C-382)

February 23, 1995

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Lan 502.03 Other tracts. Whenever necessary, the land surveyor shall examine other rhan subject tract and abutting tracts or seek additional information which relate to the boundaries of the land.

Lan 502.04 Resources. Proper research shall include, but not be limited to:

(a). Records of previous surveys.

(b). Registry of deeds and registry of probate.

(c). Records of highways.

(d). Railroad and utility line records and plans.

(e). Tax maps.

(f). Topographic maps.

APPENDIX F

(g). Local histories.

(h). Aerial photographs.

(i). Genealogies.

(j). Court Records.

Lan 502.05 Abutter Testimony. In addition to research of written material, the land surveyor shall, when necessary, confer with the owner(s) of adjoining tract(s).

EXCERPT SMITH v. WEDGEWOOD BUILDERS CORP

134 N.H. 125, 129-30

I. The McCrillis Lot

[3] The fact that the deed description burdens the title examiner with an enormous task of research, to determine what is conveyed, has no bearing on the validity of the conveyance, if, in fact, the property conveyed can be reasonable determined by the description. The description used by Bryson in his 1957 deed may be criticized as careless and slothful, and as reflecting a bad conveyance practice, but not so void for infefiniteness. It is clear plaintiffs could have determined precisely what property Bryson owned along the named roads. The extrinsic evidence considered by the trial court adequately its finding that the 1957 deed included and intended to convey the McCrillis lot.

APPENDIX G

[5] The plaintiffs' claim of title to the McCrillis lot was properly rejected, and title to the lot was properly quieted in the defendants. The decree, as it relates to the McCrillis lot, is affirmed.

THE STATE OF NEW HAMPSHIRE SUPERIOR COURT

ROCKINGHAM COUNTY November 21, 1994

No. 92-C-00382

NOTICE OF DECISION

R.S.L. Layout &, Design vs. Smith Robert F. et al

Please be advised that on November 21, 1994 the Court Gray, J. made the following order on the Defendants' Motion for Summary Judgement:

"There are many factual questions for resolution by the trier of fact Motion Denied."

S/_____
Raymind W. Taylor, Clerk
Administration and Justice Bldg.
One Hampton Road
Exeter, N.H. 03833-4823
Tel: (603) 772-3714

APPENDIX H

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM COUNTY SUPERIOR COURT

NOTICE OF DECISION

R.S.L. Layout and Design Inc.

vs. 92-C-382

Robert F. Smith, Et Al

RULING ON DEFENDANT'S MOTION TO SET ASIDE AND RELATED RELIEF

Defendant's Motion having been considered, the Order of Judgement entered on February 24, 1995 stands AFFIRMED. This ruling may be considered FINAL for purposes of appeal.

S/_____
Frederick Goode, Presiding Justice
Dated: March 23, 1995

APPENDIX I

EXCERPT 1986 New hampshire Code of Administrative Rules

Lan 501.01 Land Surveyor/Client Basic Relationship: In relationship with client, the land surveyor shall:

(a) Act for a client or employer as a finder of fact and shall provide the most nearly correct answer to the problem invloved,

PART Lan. 502 STANDARDS FOR RESEARCH

Lan 502.01 Subject Tract. The subject tract shall be researched as far back as practicable to insure the correctiveness of the record evidence.

APPENDIX J

EXCERPT 1993 NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Lan 502.01 RESEARCH STANDARDS.

(a) A land surveyor assuming the responsibility of performing a land survey shall also assume the responsibility for such research of adequate throughness to support the determinations of the intended boundaries of the parcel surved.

APPENDIX K

Exercpt from

APPEAL OF ASTROSPECTACULAR Page 300.

"...[W]hen construing the meaning of a statute, we first examine the language found in the statute, Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 277, 608 A.2d 840,845 (1992), "and where possible, we ascribe the plain and ordinary meanings to words used." Id. (qotation omitted); see RSA 21:2 (1988). Courts "can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include." Brown v. Brown, 133 N.H. 442, 445, 577 A.2d 1227, 1229 (1990) (qotation omitted).

APPENDIX L

"[T] legislative intent is to be found not in what the legislature might have said, but rather in the meaning of what it did say." Corson v. Brown Prods., Inc., 119 N.H. 20, 23, 397 A.2d 640, 642 (1979)...."

U.S.C.Amends. Amend 14

[1] All persons born or naturalized in the United States, and are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein the reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

EXCERPT FROM PETITIONERS' NOTICE OF APPEAL

SPECIFIC QUESTIONS TO BE RAISED ON APPEAL

1. Whether the trial court was in error or abused its discretion when it found without any New Hampshire authority to support its decision that plaintiff had no duty to defendants, and granted plaintiff an exception to the rule of statutory law, administrative law, and prevailing case law?

2. Whether the trial court was in error or abused its discretion by granting plaintiff an exception to the rule of law where defendants had a property right interest at risk violated defendants' U.S.C. Amends. Amend 14 to due process and equal protection under law.

APPENDIX N

3. Whether the trial court was in error or abused its discretion by granting plaintiff an exception to the rule of law where defendants' had a property right at risk violated defendants' U.S.C. Amends. Amend 14, to possess, enjoy, and dispose of their property?

7. Whether the trial court was in error or abused its discretion when it denied defendants motion for Finding of Facts and Rulings of Law containing sufficient decisions of this court concerning the legislative intent of the word "shall" and clearly indicated the legal duty of plaintiff and this court's rulings that: "...[C]ourts can neither ignore the plain language of the legislation nor add words which the lawmakers did not see to include ...."

APPENDIX N-1